IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP NO.13142 of 2006

DATE OF DECISION: 14.11.2006

Smt. Ranjit Kaur ....Petitioner

Versus

State of Punjab and others ....Respondents.

CORAM: HON'BLE MR.JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

PRESENT: Mr. Pawan Kumar, Advocate
for the petitioner.

Mr.Ashok Aggarwal, Addl. A.G. Punjab,
for respondents No.1 and 2.

Mr. Harinder Sharma, Advocate
for respondent No.3.

J.S. Khehar, J. (oral)

The petitioner was inducted into the service of the Education Department, Punjab, as a Lecturer in Biology in 1972 and was thereafter promoted to the post of Senior Lecturer in the Punjab Educational Service (Class II) in 1997. The posts of District Education Officers (Secondary Education/Elementary Education), Principal, District Institute of Education and Training, Principal, Secondary Schools, Assistant Director, Evaluation Officer, Subject Matter Expert (State Council of Education Research and Training), Survey Officer, Deputy Circle

Education Officer, Deputy District Education Officer, District Science Supervisor, Senior Lecturer, Senior Guidance Counsellor, Agricultural Advisor, Coordinator (Population Education), Officer on Special Duty (Works and Planning), Officer on Special Duty (Scholarship) and Coordinator, are common cadre posts, included in the Punjab Educational Service (School and Inspection) Group A Service Rules, 2004 (hereinafter referred to as the `2004 Rules'). Rule 5 of the 2004 Rules delineates the method of appointment, qualifications and experience for posts governed by the 2004 Rules. In terms of rule 5 of the 2004 Rules, details have been depicted in Appendix `B' thereof. A perusal of Appendix `B' reveals that all the posts in the common cadre, depicted at serial No.3 of Appendix `B', are to be filled up 100 percent by promotion. The qualifications and experience for appointment by promotion are depicted in column 6 of Appendix `B'. The same is relevant for the present controversy and is, accordingly, being extracted hereunder:-

> " From amongst District Education Officers (Secondary Education), District Education Officers (Elementary Education), Principal, District Institute of Education and Training, Principal, Secondary Schools, Assistant Director, Evaluation Officer, Subject Matter Expert (State Council of Education Research and Training), Survey Officer, Deputy Circle Education Officer, Deputy District Education Officer, District Science Supervisor, Senior Lecturer, Senior Guidance Counsellor, Agricultural Advisor, Coordinator (Population Education), Officer on Special Duty (Works and Planning), Officer on Special Duty (Scholarship) and

Coordinator, who have an experience of working as such for a minimum period of ten years on either of these posts.

(a) Fifty-five percent from amongst the Lecturers, working under the control of the Directors who have an experience of working as such for a minimum period of seven years;

(b) Thirty percent from amongst the Head Masters/Mistresses, working under the control of the Director who have an experience of working as such for a minimum period of seven years; and

(c) Fifteen percent from amongst the Vocational Lecturers/Masters/Mistresses, working under the control of the Director, who have an experience of working as such for a minimum period of seven years:

Provided that under this clause only those Vocational Lecturers/Masters/Mistresses shall be considered for promotion, who have initially been appointed in the pay scale of Lecturer, as may be notified by the Punjab Government from time to time.

Note.- It is made clear that in view of the norms of official propriety, only the senior-most officer, holding any of the post mentioned under column 2, shall be posted as District Education Officer." (emphasis is ours).

Learned counsel for the petitioner has emphatically placed reliance on the Note in column 6, extracted hereinabove, to assert that the norms of official propriety require that "...only the senior-most officer, holding any of the post mentioned under column 2, shall be posted as

District Education Officer...”

It would be pertinent to mention that the common cadre, referred to above, incorporates the posts depicted in column 2. Undoubtedly, when the petitioner came to be promoted as Senior Lecturer in 1997, she became a member of the aforesaid cadre and in terms of her seniority in the said common cadre, she claims posting, as a matter of official propriety, against the post of District Education Officer. In so far as the instant issue is concerned, learned counsel for the respondents has handed over to us a seniority list, wherein the name of the petitioner figures at serial No.43. It is not a mater of dispute that the cadre of District Education Officers (Secondary Education/Elementary Education) comprises of 40 posts. However, in the seniority list, handed over to us in Court today, there are a number of persons above the petitioner who are holding higher posts after having been promoted either to the posts of the rank and status of Director of Public Instructions (Schools), or of the rank and status of Deputy Director. It is also pointed out by the learned counsel for the respondents that as a matter of fact there are only 38 incumbents in the said common cadre holding the posts of District Education Officer. It is, therefore, apparent that at least 2 posts of District Education Officer are available as vacant.

The petitioner has impugned, through the instant writ petition, the order dated 15.6.2006 (Annexure P1) vide which she has been transferred from the post of District Education Officer (Secondary Education) Muktsar, to the post of Senior Lecturer, DIET Deon, Bathinda. Relying on the note in column 6, extracted hereinabove, learned counsel for the petitioner vehemently contends that the instant

action of the authorities in overlooking the seniority of the petitioner and posting her as a Senior Lecturer, although official propriety requires her to be posted as District Education Officer, is clearly contrary to the statutory requirement of the 2004 Rules. To substantiate the hardship caused to the petitioner through the instant impugned order, by which she has been transferred, it is pointed out that the name of the petitioner in the common seniority list figures at serial No.257, whereas respondent No.3, who has been posted in her place, figures at serial No.369 i.e. more than 110 steps below the petitioner. This factual aspect i.e. the position of the petitioner and respondent No. 3 is not disputed in the written statements filed on behalf of the official respondents (and even in the one filed on behalf of respondent No.3). According to the learned counsel for the petitioner, this action at the hands of the respondents, keeping in view the Note under column 6, is clearly arbitrary, besides being in violation of the statutory provisions. According to learned counsel, this action is insulting and humiliating for the petitioner, inasmuch as, the petitioner has been substituted by a person who is far far junior to her. Additionally, learned counsel for the petitioner has asserted that the petitioner is to retire on attaining the age of superannuation on 31.5.2007, and as such, the transfer of the petitioner soon before the age of superannuation, besides being contrary to the transfer policy dated 4.4.2006 (Annexure P2), is also contrary to all norms of administrative propriety.

As against the aforesaid contention of the learned counsel for the petitioner, it is the contention of learned counsel representing the official respondents, that the petitioner was not found suitable to continue as District Education Officer, as her performance of administrative duties,

while she was posted as District Education Officer, Muktsar, was substantially lacking. In this behalf, learned counsel for respondents No. 1 and 2 has invited our pointed attention to the averments contained in paragraph 3 of the preliminary objections, relevant extract whereof is reproduced hereunder:-

> " Therefore the following three administrative cases pending against her as District Education Officer, Muktsar:
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> (1)Chargesheet under rule 8 of Punishment and Appeal Rules, 1970 was issued vide Government letter No.4/48/2006-4Edu.4/1666 dated 3.7.2006 to Smt.Ranjit Kaur, Ex. D.E.O. Muktsar now Sr. Lecturer, DIET, Deon (Bathinda) on the allegations of sanctioning her medical leave at her own level from 10.4.2006 to 24.10.2006 and in her absence giving the charge of the post of DEO (SE), Muktsar to Sh. Charanjit Singh Brar, Deputy D.E.O.(SE) Muktsar at her own level. No final decision has been taken in this regard. The matter is under consideration.
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> (2)A show cause notice was also issued to Smt. Ranjit Kaur the then D.E.O.(SE) Muktsar vide Govt. memo.No.4/48/2006-4E4/1363, dated 5.6.2006 for not filing reply of C.W.P.No.19576 of 2005 Kailash Nath part time sweeper and others versus State of Punjab, in time. No final decision has so far been taken and the matter is under consideration of the Government.
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> (3)In another case a letter No.1/17/2006-2E4/1036, dated 9.5.2006 was written to DPI to send a report for not giving

> cooperation regarding supply of vacancy position of teaching cadre of the year 1996-2000 by the Deputy DEO (SE), Fatehgarh Sahib, DEO (SE) Muktsar and DEO Sangrur and to send comments/report on the clarification received from the DEOs. Comments in this regard was sent to Government by the DPI (SE) vide its letter No.5/9-4/14-2006S1(4) dated 19.5.2006. A simple warning has been issued to Smt. Ranjit Kaur, the then DEO(SE) Muktsar to be careful in future."

In view of the aforesaid accusation levelled against the petitioner, it was felt that the petitioner ought not to be continued as District Education Officer, and therefore, in administrative exigency, she was transferred against the post of Senior Lecturer, DIET, Deon, Bathinda.

Additionally, it is the contention of the learned counsel for respondents No.1 and 2, as well as, respondent No.3, that the instant transfer and posting of the petitioner is based on a request made by the petitioner's husband. In this behalf, our attention has been invited to the two communications, appended to the writ petition itself as Annexures P4 and P5. The first of the aforesaid communications is dated 19.6.2006 (Annexure P4) i.e. soon after the impugned transfer order was passed on 15.6.2006. In the aforesaid representation the husband of the petitioner allegedly claimed that the petitioner be posted as DEO (Secondary Education/Elementary Education) or Principal, GIST, Bathinda, by changing her posting from the cadre of Senior Lecturer. In fact, it was pointed out, that this was the original request made by him, on behalf of the petitioner. The subsequent communication dated 12.8.2006

(Annexure P5) is also to the same effect.

Learned counsel for respondent No.3 has raised an additional plea. It is contended on behalf of respondent No.3, that the petitioner has no right to claim posting as District Education Officer (Secondary Education/Elementary Education). In this behalf, learned counsel for respondent No.3 has invited our attention to the Punjab Civil Services (General and Common Conditions of Service) Rules, 1976. Rules 9 and 10 thereof have been brought to our notice. The same are extracted hereunder:-

> "9. Liability of members of Service to transfer.- A member of a Service may be transferred to any post whether included in any other service or not, on the same terms and conditions as are specified in Rule 3.17 of the Punjab Civil Service Rules, Volume I, Part I.
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> 10. Liability to serve.- A member of a Service shall be liable to serve at any place, whether within or out of the State of Punjab, on being ordered so to do by the appointing authority."

In sum and substance, in view of the factual and legal position noticed hereinabove, we are satisfied, that the 2004 Rules mandate, that as a matter of propriety a member of the common cadre included at serial No.3 of Appendix `B' of the 2004 Rules, must, on the basis of his seniority, be posted as a District Education Officer. In other words, by a mandate of the statutory rules, the post of District Education Officer, is recognised and accepted as a superior post out of the common cadre, and as such, posting thereto, is to be made on the basis of seniority

from out of the common cadre, by posting the senior most members of the said common cadre as District Education Officers. Had the rule of seniority been adopted, the petitioner would have inevitably continued as a District Education Officer (Secondary Education/Elementary Education) irrespective of the place of her posting. As a matter of deviation from the statutory rule, it is surprising that the petitioner should have been substituted by a person who is more than 100 steps junior to her.

Although the matter of official propriety is not an issue, which is in the nature of a mandate, to be followed under all circumstances. It is, in our view, a mandate which should ordinarily be followed, unless there are compelling circumstances, not to do so. In the submissions advanced by the learned counsel for the respondents, the compelling circumstances have been delineated in paragraph 3 of the preliminary objections contained in the joint written statement filed on behalf of respondents No.1 and 2. It would be pertinent to mention that to repudiate the basis of the petitioner's transfer depicted in paragraph 3 of the preliminary submissions, the petitioner has filed a replication, wherein, in response to the aforesaid allegations, it is asserted by the petitioner as under:-

> " The so called cases, which are alleged to have been pending against the petitioner while she was working as DEO Muktsar, the detail reply of the same are being given as under:-
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> i) A charge sheet under Rule-8 was issued to the petitioner vide letter dated 3.7.2006. The allegation in this charge-

sheet, against the petitioner, is that she herself got sanctioned medical leave from 10.4.2006 to 24.10.2006 and further allegation is that without permission of the higher authority she handed over the charge of the post of the DEO Muktsar to Shri Charanjit Singh Brar, Deputy DEO (SE) Muktsar. In this regard, it is submitted that the petitioner has also filed a reply to the charge sheet and explained that she never got sanctioned medical leave from 10.4.2006 to 24.10.2006. This was wrongly typed and the correct date for medical leave was 16.4.2006 to 24.4.2006. She further explained that medical leave was sanctioned by the Circle Education Officer, Faridkot from 10.4.2006 to 24.4.2006 for 15 days. This medical leave was obtained by the petitioner so as to undergo White Caterena Eye Operation and immediately thereafter she joined her duties on 2.5.2006. Now the matter si after submission of reply pending before the Secretary, Education. Moreover, the transfer of the petitioner is not based upon this so-called charge-sheet. The petitioner was admittedly transferred during general transfer, which is beyond the scope of the Transfer Policy. Moreover, if the petitioner is to be transferred, she may be given the post of DEO(SE) only and not that of Lecturer.

ii) As regards the Show Cause Notice for not filing the reply in CWP No.19576 of 2005 is concerned, that matter relates to the disbursement of the salary to the Part Time

Sweepers. The petitioner, however, disbursed the salary to all the Part Time Sweepers and thereafter the reply was submitted in the court and the writ was dismissed on 23.5.2006 and there was no delay in filing the reply. Therefore, the reference of this show cause notice is nothing else but a deliberate attempt to justify the illegal order of transfer, which is against Transfer Policy of the government.

iii)So far as the letter dated 9.5.2006 is concerned to send a report regarding supply of vacancy position and the same was sent on 15.5.2006 after collecting the relevant data from 1996 to 2000 and the same was further forwarded to the Minister concerned. The petitioner has not received any warning letter till date. Moreover, on the basis of this so-called warning letter, the employee of the State cannot be transferred arbitrarily. If that is so, the entire employees of the State would be liable to transfer from one place to another, against whom some departmental proceedings are pending."

Ordinarily, we would have refrained from examining the veracity of the allegations contained in paragraph 3 of the preliminary submissions contained in the joint written statement filed on behalf of respondents No.1 and 2, however, when the learned counsel for the petitioner attempted to substantiate the hollowness of the same, we were persuaded to examine them. On a close examination of the aforesaid allegations, in conjunction with the response at the hands of the

petitioner, extracted in the foregoing paragraph, we were persuaded to form an impression that the said allegations were merely compiled to defeat the claim of the petitioner. Our aforesaid conclusion is based on the reasons recorded hereafter.

The first accusation levelled against the petitioner for justifying the transfer of the petitioner, as has been reflected in preliminary submission No.3, is that a charge sheet under rule 8 of the Punishment and Appeal Rules, 1970, is pending against the petitioner, for having sanctioned her own medical leave. In the replication filed by the petitioner, it is categorically asserted that the aforesaid medical leave sought by her was sanctioned by the Circle Education Officer, Faridkot, and that the same was not sanctioned by the petitioner herself. There is no denial to the aforesaid assertion in the replication, at the hands of the respondents. It is also the contention of the learned counsel for the petitioner, that the impugned transfer order was passed on 2.9.2005, whereas, the allegations contained in the charge sheet related to a period after 2.9.2005. It is, therefore, submitted that the assertion of the respondents in the written statement, based on the charge sheet under rule 8 of the Punishment and Appeal Rules, 1970, as also, the assertion at the hands of the authorities that the transfer of the petitioner was based thereon, smacks of mala fides and extraneous considerations. Unfortunately, we find that the aforesaid accusation is fully justified, as it is not possible for us to understand, how a transfer order passed on 2.9.2005, could be based on facts and circumstances, which emerged for the first time in April 2006, as the allegations in the charge sheet pertain to the period commencing from April 2006.

The second basis for justifying the transfer of the petitioner, as reflected in preliminary submission No.3 is to the effect, that the petitioner did not file a reply to CWP No.19576 of 2005, which had been filed by Kailash Nath, a Part Time Sweeper working in the office of the District Education Officer (Secondary Education), Muktsar. In so far as the instant issue is concerned, it is submitted by the petitioner that in the writ petition filed by Kailash Nath, he had claimed unpaid salary. It is stated that the petitioner made arrangements to pay undisbursed salary to Kailash Nath, whereupon a statement was made to the aforesaid effect, during the course of hearing of the said case, as a result whereof the aforesaid writ petition was dismissed. It is, therefore, submitted that the action of the petitioner was the most appropriate course to be adopted in the facts and circumstances of the said case. The response of the petitioner contained in the replication, as has been noticed hereinabove, has not been disputed at the hands of the respondents. Having examined the issue in its totality, we are satisfied, that the petitioner adopted the most appropriate course, as ought to be adopted, in all such cases, where an employee stakes a claim for disbursement of unpaid wages. Accordingly, we are satisfied that the second ground, justifying the petitioner's transfer, through the impugned order dated 2.9.2005, is, to say the least, frivolous.

Thirdly, it is asserted by the respondents in preliminary submission No. 3, for justifying the transfer of the petitioner, that the petitioner did not respond to a communication dated 9.5.2006 addressed to her by the Director, Public Instructions, requiring her to submit a report in respect of the vacant posts in the teaching cadre during the years

1996-2000, for which a warning was issued to the petitioner on 19.5.2006, requiring her to be careful in future. In response to the aforesaid communication, it is asserted by the petitioner in her replication that the petitioner submitted a report in response to the aforesaid communication dated 9.5.2996 received from the Director, Public Instructions, on 15.5.2006 i.e. within six days of the despatch of the aforesaid letter. It is also submitted that the aforesaid report, along with the relevant data, was also forwarded to the Minister concerned. The petitioner in her replication claims, that she is not in receipt of any communication by which she has been warned to be careful in future. Having examined the totality of the instant allegation, it is difficult for us to arrive at the conclusion, that the petitioner was remiss in any manner, specially because the response of the petitioner, contained in her replication, has not been disputed. Be that as it may, there can hardly be any justification for transferring the petitioner from a post occupied by her, just a few months before her retirement on attaining the age of superannuation, on the basis of the communication despatched to the petitioner by the Director, Public Instructions, dated 9.5.2006.

Thus, it emerges from an analysis of the reasons, which weighed with the respondents in transferring the petitioner, that the said reasons could not have been the basis of the transfer of the petitioner in administrative exigency, on account of inappropriate discharge of duties of the post of District Education Officer (Secondary Education), Bathinda. Since, none of these reasons which weighed with the authorities (as per the assertion in the joint written statement filed on behalf of respondents No.1 and 2) relate to the discharge of the duties of

the post of District Education Officer, we are satisfied, that the reasons indicated in preliminary submission No.3, for transferring the petitioner, from the post of District Education Officer, to the post of Senior Lecturer, were merely trumped up reasons, to defeat the claim of the petitioner.

In view of the aforesaid conclusions recorded on the facts of the instant case, leading to the inference, that the basis of the transfer of the petitioner, as has been depicted in preliminary submission No.3, was not bona fide but extraneous, as also, the conclusions recorded by us on the implications and the effect of the Note under column 6 of Appendix `B' of the 2004 Rules (extracted hereinabove), we are of the view, that the other submissions advanced by the learned counsel for the respondents need not be dealt with, as the same are rendered meaningless.

For the reasons recorded above, the instant writ petition is allowed. The impugned order of transfer dated 15.6.2006, whereby the petitioner has been posted as Senior Lecturer despite her acknowledged seniority in the common cadre, noticed hereinabove, and also, the factum of her being superseded for the said purpose by a person 110 steps junior to her, for posting as District Education Officer (Secondary Education), despite the Note under column 6 of Appendix `B' (extracted above) to say the least constitutes official impropriety, and is accordingly set aside. This action of the authorities for a sensitive person, can be clearly stigmatic, as it seems to have been for the petitioner herein. We are of the view that transfer of the petitioner who is to retire on attaining the age of superannuation on 31.5.2007 was wholly inappropriate, not only in the facts and circumstances of this case, but also in view of the transfer policy issued by the State Government which incorporates that employees

retiring within two years should not be transferred.

(J.S. Khehar)
Judge

(S.D. Anand)
Judge

November 14, 2006.
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